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UNITED STATES DISTRICT COURT

FOR THE

NORTHERN DISTRICT OF CALIFORNIA

**C08 00189 HRL**

JOSE DE LA PAZ SORTO,

Plaintiff,

vs.

HANNEGAN, BENSON & CO., INC. doing

business as C.B. HANNEGAN's, CHRIS

BENSON, Does 1-10 , Defendants

)  
) COMPLAINT FOR DAMAGES AND  
) DEMAND FOR JURY TRIAL:

- ) 1) Violation of California Labor Code  
) Section 510;  
) 2) Violations of the Federal Fair Labor  
) Standards Act;  
) 3) Violations of California Labor Code  
) Section 226.7;  
) 4) Violation of California Business and  
) Professions Code Section 17200; and  
) 5) Violation of California Labor Code  
) Section 201; and  
) 6) Violation of California Labor Code  
) Section 226.

**NATURE OF CLAIM**

1. This is an action on behalf of JOSE DE LA PAZ SORTO who had been employed on a hourly basis by HANNEGAN, BENSON & CO., INC. dba C.B. HANNEGAN's, CHRIS BENSON, and Does 1-10 (collectively "C.B. HANNEGAN'S") during the last two years prior to the filing of this Complaint, seeking damages arising from employer's failure to pay overtime as required by the Fair Labor Standards Act and the California Wage Orders and statutes. Plaintiff seeks compensatory damages for unpaid wages under California Labor Code and Wage Orders, liquidated damages under 29 U.S.C. §216(b),

1 waiting time penalties under California Labor Code § 203, damages for failure to provide  
2 adequate meal and rest periods under California Labor Code § 226.7, damages for  
3 inadequate pay statements under California Labor Code Section 226, and attorney's fees,  
4 costs, pre judgment interest pursuant to California Labor Code § 1194(a) and 29 U.S.C. §  
5 216(b), and restitution under California Unfair Trade Practices Act under California  
6 Business and Professions Code § 17203.

### 7 **PARTIES**

- 8 2. At all times relevant herein, Plaintiff JOSE DE LA PAZ SORTO ("SORTO") is an  
9 individual resident of San Jose, California.
- 10 3. At all times relevant herein, HANNEGAN, BENSON & CO., INC. owns and operates  
11 the C.B. HANNEGAN'S, with its principal place of business in Los Gatos, California.
- 12 4. Individual Defendants CHRIS BENSON, and Does 1-10 at all times relevant herein, are,  
13 according to information and belief, owners, managers, directors, associates, related to, or  
14 employees of C.B. HANNEGAN'S, having control over the Plaintiff's work condition  
15 and work situation.

### 16 **GENERAL ALLEGATIONS**

- 17 5. At all times relevant herein, Plaintiff was an employee of Defendants at the restaurant  
18 C.B. HANNEGAN'S in Los Gatos, California.
- 19 6. Plaintiff was according to information and belief, an employee of Defendant C.B.  
20 HANNEGAN'S, acting in the normal course and scope of employment duties with  
21 Defendants.
- 22 7. During the course of Plaintiff's employment with Defendants, Plaintiff regularly worked  
23 in excess of 8 hours per day and more than 40 hours per week.
- 24 8. Plaintiff was paid on an hourly basis.
- 25

- 1 9. Plaintiff did not perform "exempt" duties in his position as a construction worker with  
2 Defendants and thus was not subject to any exemption under the Fair Labor Standards  
3 Act, 29 CFR 541.112, 541.209 and 541.209. The Plaintiff was not even marginally  
4 responsible for management or administrative functions, and his primary job did not  
5 require him to exercise independent discretion and judgment or regularly require  
6 invention or imagination in a recognized field of artistic endeavor more than fifty percent  
7 of his working time.
- 8 10. At no time during the Plaintiff's employment did Plaintiff maintain any professional  
9 license with the state or practice any recognized profession, nor did Plaintiff exclusively  
10 manage any division of Defendant C.B. HANNEGAN'S where he customarily and  
11 regularly exercised discretionary powers or perform services of management. Plaintiff  
12 did not directly supervise any employees nor did he participate in the development of  
13 general administrative policies of Defendant C.B. HANNEGAN'S.

14 **COUNT ONE**

15 **VIOLATION OF CA LABOR CODE SECTION §510**

16 **FAILURE TO PROPERLY PAY OVERTIME WAGES**

- 17 11. Plaintiff re-alleges and incorporates paragraphs 1-10 as if fully stated herein.
- 18 12. California Labor Code Section 501, applicable at all times relevant herein to Plaintiff's  
19 employment by Defendants, provides that all employees are entitled to payment at the  
20 rate of time and one half for hours in excess of 8 in one day, or 40 hours in one week, and  
21 double time for hours in excess of 12 in one day.
- 22 13. During the course of employment with Defendants, Plaintiff regularly worked in excess  
23 of 8 hours a day and 40 hours per week, however Defendant's knowingly and willingly  
24 failed to pay Plaintiff overtime wages as required by law.  
25

1 14. California Labor Code Section 1194 provides that it is unlawful for employers not to  
2 make the required overtime payments identified in the preceding paragraph and that  
3 employees not paid such payments can recover any monies owed by civil action.

4 15. Defendants therefore owe Plaintiff overtime wages not properly paid to Plaintiff in an  
5 amount to be determined at trial.

6 16. Defendants have failed and refused and continue to fail and refuse to pay Plaintiff the  
7 amount owed.

8 17. Defendants' failure to pay Plaintiff the required sum violates the provisions of Labor  
9 Code Sections 510 and 1194 and is therefore unlawful.

10 18. Pursuant to Labor Code Section 1194(a), Plaintiff requests that the court award Plaintiff  
11 reasonable attorney's fees and costs incurred by him in this action.

12 **COUNT TWO**

13 **VIOLATION OF THE FAIR LABOR STANDARDS ACT**

14 **FAILURE TO PROPERLY PAY OVERTIME WAGES**

15 19. Plaintiff re-alleges and incorporates paragraphs 1-18 as if fully stated herein.

16 20. At all relevant times herein, Plaintiff's employment was subject to the provisions of the  
17 Fair Labor Standards Act of 1938, as amended ("FLSA"), 29 U.S.C. § 201, et seq. and  
18 Plaintiff was an individual employee covered by virtue of Plaintiff's direct engagement in  
19 interstate commerce.

20 21. The FLSA, 29 U.S.C. § 207 requires all employees to be paid overtime for work  
21 performed in excess of forty hours per week, unless specifically exempted by the law.

22 22. Although Plaintiff was not so exempt during employment with Defendants, Defendants  
23 knowingly caused and permitted Plaintiff to regularly work in excess of forty hours per  
24 week without paying Plaintiff one and one half of Plaintiff's regular rate of pay.  
25

1 23. By not paying overtime wages in compliance with the FLSA, defendants violated  
2 Plaintiff's rights under the FLSA.

3 24. As a direct and proximate result of defendants' failure to pay proper wages under the  
4 FLSA, Plaintiff incurred general damages in the form of lost overtime wages.

5 25. Defendants intentionally, with reckless disregard for their responsibilities under the  
6 FLSA, and without good cause, failed to pay Plaintiff proper wages, and thus defendants  
7 are liable to Plaintiff for liquidated damages in an amount equal to lost overtime wages,  
8 pursuant to 29 U.S.C. § 216(b) of the FLSA.

9 26. Defendants therefore owe Plaintiff overtime not properly paid to Plaintiff, in an amount  
10 to be determined at trial.

11 27. Plaintiff was required to retain legal assistance in order to bring this action and, as such,  
12 is entitled to an award of reasonable attorney's fees pursuant to 29 U.S.C. § 216(b) of the  
13 FLSA.

14 **COUNT THREE**

15 **FAILURE TO PROVIDE MEAL PERIODS**

16 **CALIFORNIA LABOR CODE SECTION § 226.7**

17 28. Plaintiff re-alleges and incorporates the allegations set forth in paragraphs 1-27 as if fully  
18 restated hereinafter.

19 29. At all relevant times herein, Plaintiff's employment with Defendants was subject to the  
20 provisions of California Labor Code § 226.7, which requires the employer to provide  
21 employees a thirty-minute meal break for every five hours worked, unless expressly  
22 exempted.

23 30. During Plaintiff's employment with Defendants, Plaintiff worked at least 5 hours a day,  
24 and was not provided a meal period as required by law.  
25

1 31. For each time that the Plaintiff was not provided the required meal period, the Plaintiff is  
2 entitled to recover one additional hour of pay at each employee's regular rate of  
3 compensation pursuant to California Labor Code section 226.7.

4 32. Plaintiff was therefore entitled to payment, in an amount to be proven at trial for  
5 additional pay for each meal period that Defendants failed to provide.

6 WHEREFORE, Plaintiff prays for judgment as set forth below.

7 **COUNT FOUR**

8 **VIOLATION OF CA LABOR CODE SECTION 201**

9 **FAILURE TO PAY WAGES DUE AND "WAITING TIME" PENALTIES**

10  
11 33. Plaintiff re-alleges and incorporates the allegations of paragraphs 1-32 as if fully stated  
12 herein.

13 34. At the time Plaintiff's employment with Defendants was terminated, Defendant's owed  
14 Plaintiff certain unpaid overtime wages in amounts previously alleged.

15 35. Failure to pay wages owed at an employee's termination as required by Labor Code §201  
16 subjects the employer the payment of a penalty equaling up to 30 days wages, as  
17 provided for in Labor Code § 203.

18 36. As of this date, Defendants have failed and refused, and continue to fail and refuse, to  
19 pay the amount due, thus making defendants liable to Plaintiff for penalties equal to thirty  
20 (30) days wages, in an amount to be determined at trial.

21 37. Pursuant to Labor Code Section 218.5, Plaintiff requests that the court award Plaintiff  
22 reasonable attorney's fees and costs incurred in this action.

23 38. Pursuant to Labor Code Section 218.6, Plaintiff requests that the court award interest on  
24 all due and unpaid wages, at the legal rate specified by Civil Code Section 3289(b),  
25 accruing from the date the wages were due and payable.

**COUNT FIVE**

**VIOLATION OF CA BUSINESS AND PROFESSIONS CODE SECTION 17200**

**UNFAIR BUSINESS PRACTICES**

39. Plaintiff re-alleges and incorporates the allegations of paragraphs 1-38 as if fully stated herein.

40. At all times relevant herein, Plaintiff's employment with Defendants was subject to the California Labor Code and applicable Wage Orders promulgated by the California Industrial Welfare Commission, which required all employees to be paid overtime for work performed in excess of forty hours per week or eight hours per day, unless specifically exempted by law.

41. At all times relevant herein, as the employer of Plaintiff, Defendants were subject to the California Unfair Trade Practices Act (California Business and Professions Code § 17000 et seq.), but failed to pay the Plaintiff overtime pay as required by applicable California Labor Code and applicable Wage Orders.

42. During the period Plaintiff was employed with Defendants, Defendants failed to pay Plaintiff legally required overtime pay to which he was legally entitled, with Defendants keeping to themselves the amount which should have been paid to Plaintiff.

43. In doing so, defendants violated California Unfair Trade Practices Act, Business and Professions Code §17200, et seq. by committing acts prohibited by applicable California Labor Code provisions, California Wage Orders, and the FLSA, thus giving them a competitive advantage over other employers and businesses with whom defendants were in competition and who were in compliance with the law.

1 44. As a direct and proximate result of defendants' violations and failure to pay the required  
2 overtime pay, the Plaintiff's rights under the law were violated and the Plaintiff incurred  
3 general damages in the form of unpaid wages in an amount to be determined at trial.

4 45. Defendants had been aware of the existence and requirements of the Unfair Trade  
5 Practices Act and the requirements of State and Federal wage and hour laws, but  
6 willfully, knowingly, and intentionally failed to pay Plaintiff overtime pay due.

7 46. Plaintiff, having been illegally deprived of the overtime pay to which he was legally  
8 entitled, herein seeks restitution of such wages pursuant to the Business and Professions  
9 Code §17203 in an amount to be determined at trial.

10 **COUNT SIX**

11 **VIOLATION OF CALIFORNIA LABOR CODE SECTION 226**

12 **INADEQUATE PAY STATEMENTS**

13 47. Plaintiff re-alleges and incorporates the allegations of paragraphs 1-46 as if fully stated  
14 herein.

15 48. California Labor Code Section 226 provides that all employers shall provide to  
16 employees accurate and complete wage statements including, but not to limited to, an  
17 accurate and current statement of all rates paid for all regular and overtime hours worked  
18 during the pay-period, a complete and itemized statement of deductions, net wages  
19 earned, the dates fir which payment is being made, any and all applicable piece rates, and  
20 the current address ad name of the employer.

21 49. California Labor Code Section 226 further provides that any employee suffering injury  
22 due to a willful violation of the aforementioned obligations may collect the greater of  
23 either actual damages or 50\$ for the first inadequate pay statement and 100\$ for each  
24 inadequate statement thereafter.



1 50. During the course of Plaintiff's employment, defendants consistently failed to provide  
2 plaintiff with adequate pay statements as required by California Labor Code §226.

3 51. Defendants failed to provide such adequate statements willingly and with full knowledge  
4 of their obligations under Section 226.

5 52. Defendants' failure to provide such adequate statements has caused injury to the plaintiff.

6 53. Plaintiff is therefore legally entitled to recover actual damages caused by defendants'  
7 failure to provide proper records, in an amount to be determined at trial.

8 54. Plaintiff has incurred costs and fees in bringing this action and seeks to recover such  
9 costs under California Labor Code §226.

10 **PRAYER FOR RELIEF**

11 **WHEREFORE**, Plaintiff prays for the following relief:

12 55. For compensatory damages per CA Labor Code §1194 for unpaid overtime wages in an  
13 amount to be determined;

14 56. For liquidated damages per the FLSA equal to unpaid overtime wages in an amount to be  
15 determined at trial;

16 57. For damages resulting from failure to provide adequate meal periods, pursuant to  
17 California Labor Code §226.7.

18 58. For restitution of unpaid overtime pay pursuant to California Business and Professions  
19 Code §17203 in an amount to be determined at trial;

20 59. For waiting time penalty damages of thirty days wages to Plaintiff, pursuant to California  
21 Labor Code § 203 in an amount to be determined at trial;

22 60. Damages and penalties for inadequate pay statements pursuant to California Labor Code  
23 Section 226 in an amount to be determined at trial;

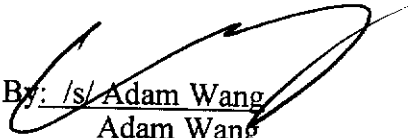
24 61. For pre-judgment interest of 10% on the unpaid overtime compensation and unpaid  
25 salaries pursuant to California Labor Code §1194(a);

1 62. Plaintiff asks the court to award reasonable attorney's fees pursuant to California Labor  
2 Code §1194(a) and 29 U.S.C. §216(b) of the FLSA;

3 63. For costs of suit herein; and

4 64. For such other and further relief as the Court may deem appropriate.  
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7 Dated: January 10, 2008  
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By:  /s/ Adam Wang  
Adam Wang  
Attorney for Plaintiff  
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